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In the

RAYMOND [illegible]
BY PUBL[illegible]
GUARDIAN AD LITEM,
Petitioners,
vs.
THE CARTER OIL COMPANY, A CORPORATION,
JACKSON, BURT MISKELL, ALBERT MISKELL
AND CAROLYN MISKELL GARNER,
Respondents.

ANSWER BRIEF OF RESPONDENTS TO PETITION FOR WRIT OF CERTIORARI.

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AUTHORITIES CITED.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1946.

No. 747

RAYMOND JACKSON, AN INCOMPETENT PERSON, BY PHIL OLDHAM, NEXT FRIEND AND GUARDIAN *AD LITEM*,

Petitioner,

vs.

THE CARTER OIL COMPANY, A CORPORATION, RHINA JACKSON, RUBY NORVELL, ALBERT NORVELL, AND CAROLYN NORVELL CLARKE,

Respondents.

ANSWER BRIEF OF RESPONDENTS TO PETITION FOR WRIT OF *CERTIORARI*.

Since the first decree was entered on April 18, 1932, (R. 38-45) wherein petitioner was held to be an imposter, there has been a never-ending series of motions to vacate and bills of review filed on his behalf. A constantly changing parade of attorneys who appeared representing petitioner in this litigation. So apparent did it become that this individual, who, by his own admission, (R. 55) had theretofore, under the name of "Willie Harjo," held himself out as an heir at law of Exchillo Harjo and Ellen Harjo, two Indians who had died leaving large estates in Seminole County, State of Oklahoma, but who now holds himself out as "Raymond Jackson," was making a racket out

of his impersonations, which racket could be continued effectively only so long as litigation was actually pending in the courts, that the United States District Court for the Eastern District of Oklahoma found it necessary to take steps to prevent him from further victimizing the lawyers and laymen of Oklahoma and other states. To accomplish this, and at the instance of the Honorable Bower Broaddus, United States District Judge, there was included in the order and decree of May 4, 1944, the following:

> "* * * that the plaintiff herein, the so-called 'California Raymond Jackson,' be and he is hereby restrained and personally enjoined from filing further suits or prosecuting further litigation against the defendants, or their successors in interest, based on the claim that he is Raymond Jackson, the allottee of the land involved in this case." (R. 212)

In the preface of his petition for writ of certiorari the petitioner states that this litigation would never have existed were it not for the fact that the land involved is extremely valuable. This undoubtedly is true, for had it been otherwise, petitioner no doubt would still be litigating his claim as "Willie Harjo" under an entirely different alleged family relationship.

Section 3 of Supreme Court Rule 27 provides that appellees need not include in their brief a statement of the case beyond such as may be deemed necessary to correct inaccuracies or omissions in the statement of the other side. The statement of the case contained in the petition for writ of certiorari and brief in support thereof is not clear to respondents, and if confusing to ones who have been actually participating in this litigation for the past sixteen years, it seems quite likely that said statement may be anything but clear to ones otherwise unfamiliar with the case. For this reason, there is included herein the following statement of the case:

Statement of Case.

The litigation, in so far as it involves the "California Raymond Jackson," the petitioner herein, was commenced by the filing of suit in the United States District Court for the Eastern District of Oklahoma on February 7, 1931. The petition filed in said case was in the name of Raymond Jackson, as plaintiff, against The Carter Oil Company, as defendant, and was docketed under No. 4246 Equity. (R. 36-37) Messrs. J. T. Dickerson and Kenneth B. Kienzle were shown thereon as attorneys for plaintiff. In said petition plaintiff alleged that he was a Seminole freedman and was the allottee of the land here involved. The relief therein sought was possession of the land and an accounting for oil and gas produced therefrom. After answer was filed, by agreement of parties said case No. 4246 was consolidated with Equity No. 3948. (R. 38) The consolidated case came on for hearing in January, 1932, on the issues as between the plaintiff therein and other parties claiming adversely to plaintiff, including the respondents herein, or their predecessors in interest. Attorneys of record for petitioner at the time of said hearing were Messers. Blakeney, Ambrister & Wallace of Oklahoma City, Oklahoma; Wallace & Wallace of Sapulpa, Oklahoma; and Kenneth B. Kienzle of Shawnee, Oklahoma. The trial continued for four days before Judge Robert L. Williams at Muskogee, Oklahoma, following which the decree of April 18, 1932, was entered. (R. 38-45) Said decree included findings of fact of the court, among which were the following:

"1. • • • that said Raymond Jackson who was the allottee of said land was killed and died at Blue Mountain, Arkansas, on or about November 8, 1921."

"5. That the alleged Raymond Jackson, plaintiff, in Equity No. 4246, known in these proceedings as the California Raymond is not the son of Davis and Rhina Jackson and is not the allottee of the land involved herein."

It was adjudged in such decree, among other things:

> "That the petition of the California Raymond Jackson, plaintiff in Equity No. 4246 * * * be and the same hereby is dismissed with prejudice,"

and by such decree title of Davis A. and Rhina Jackson, A. S. Norvell and Spencer Norvell, and The Carter Oil Company was quieted against the claim of the "California Raymond Jackson," and he was forever enjoined from thereafter asserting claim to or interest in the land.

Pleadings (R. 13-14) disclose that the "California Raymond Jackson" prayed an appeal to the Circuit Court of Appeals for the Tenth Circuit, which was allowed; however, said appeal was not perfected, although eight enlargements of time within which to do so were asked for and granted. As shown by the decree entered in the consolidated case on April 18, 1932, there were several other parties to the consolidated action who claimed to be the real Raymond Jackson—all of whom the court found to be imposters. One of the claimants known in the proceeding as the "Kentucky Raymond Jackson" perfected an appeal to the Tenth Circuit Court of Appeals, and in passing thereon the Circuit Court reviewed the record and testimony introduced in the consolidated case. Included in the transcript of testimony filed in connection with said appeal was the testimony, or most of the testimony, which had been introduced by the "California Raymond Jackson." On November 28, 1932, the Circuit Court handed down an opinion in said case which is reported as *Jackson* v. *Jackson, et al.*, 67 F. (2d) 719. Therein said appellate court abstracted the evidence and in connection therewith the following is quoted from the opinion at page 720:

> "There can be no doubt that a young man about the age of the allottee was killed accidentally on November 8, 1921, about three weeks after the allottee left his home in Oklahoma. The body was found on the railway track severed at the waist line. The deceased at the time of his death wore overalls and a jumper

with a dress suit underneath. The label on the coat of the dress suit bore the words, 'R. Jackson, Progress Tailoring Company, Chicago,' also serial number 446,965. The label was removed and preserved by the coroner; it was delivered to his successor and was introduced in evidence. A cotton gin ticket issued to R. Jackson, Shawnee, Okl., was found in the pocket of the deceased. It was not preserved but many witnesses testified positively to its existence. It appears from several witnesses and without contradiction that the allottee purchased a suit from Progress Tailoring Company some time before he left home. There is some conflict with respect to the exact time, but it cannot be doubted that he purchased a suit from that company and that he was wearing it under overalls and a jumper when he left home. There is testimony indicating that the suit made by Progress Tailoring Company and bearing serial number 446,965 could not have been made until about 1923, but we regard that discrepancy as relatively unimportant, at least not controlling, when arrayed against the certainty that the allottee purchased a suit and was wearing it when he departed from home and that the coat found on the body of the deceased in Arkansas about three weeks later was made by the company and bore the name R. Jackson."

And the following is quoted from the opinion at page 721:

"We have examined the record with great care and we think the findings are not only supported by substantial evidence, but we concur in the conclusion that appellant is an impostor; that the allottee was killed at Blue Mountain, Ark., and that upon his death, title to the land vested in his parents."

So ended the First Chapter of the "California Raymond Jackson" litigation.

The pleadings at page 15 of the record disclose that on March 26, 1934, the "California Raymond" asked leave to

file a bill to impeach the decree of March 18, 1932, which bill was tendered with his application; that written objections were filed by the respondents to the granting of such leave; that on consideration thereof the court on March 26, 1934, entered an order granting petitioner leave to file his tendered bill to impeach decree but directed that within ten days thereafter petitioner file an amended bill confining the allegations thereof to the fraud relied on and that within the same time he file a motion to vacate the decree of April 18, 1932, based on the newly discovered evidence relied on. Within the time permitted petitioner, through one of his original attorneys, Kenneth B. Kienzle of Shawnee, Oklahoma, and three new attorneys—Glen O. Morris of Oklahoma City, Oklahoma; Herbert K. Hyde of Oklahoma City, Oklahoma; and Roy St. Lewis of Washington, D. C., filed an amended bill to impeach decree (R. 45-57), which was given docket No. 4537 Equity, and on the same day filed in Equity No. 3948 a motion to vacate decree. (R. 58-61) Both pleadings were directed at the original decree of April 18, 1932, and sought to have it impeached and vacated on the ground of fraud and newly discovered evidence. After appropriate pleadings were filed the matters were originally set for hearing before Judge Williams on April 27, 1934, but by agreement of parties the case was continued to May 1, 1934, at which time the introduction of evidence was begun. The record does not disclose that plaintiff asked for a continuance of the hearing for the reason that he could not produce any witness, or witnesses, or on any other ground. He went to trial on May 1, 1934, without suggestion of any sort that the hearing be postponed to a later date. It was agreed by all parties that evidence theretofore introduced in No. 3948 Equity and the other case consolidated therewith, including No. 4246 Equity, under which number the "California Raymond Jackson's" original petition was docketed, should be considered as introduced in evidence so far as competent and material in the consideration of petitioner's amended bill to impeach and his motion to vacate decree. On May 3, 1934, Judge Williams, having heard evi-

dence for approximately three days and both sides having rested, entered a decree dismissing with prejudice petitioner's amended bill to impeach decree and overruling his motion to vacate decree. (R. 61-65) It is interesting to note that neither Mr. Hyde nor Mr. St. Lewis appeared at the trial. It is apparent that after investigation both had abandoned the case.

In the decree so entered were incorporated certain findings of fact with reference to the fraud allegations contained in petitioner's amended bill to impeach decree, as follows:

> "7. That no testimony introduced by the interveners, A. S. Norvell, Spencer Norvell, Davis Jackson and Rhina Jackson, was fixed or framed, as alleged by the plaintiff in paragraph No. 12 of his bill to impeach the decree, or otherwise, and the plaintiff herein has produced no evidence to substantiate his charges made in said amended bill as follows: 'That witnesses were purchased and paid large sums of money to testify to matters on behalf of A. S. Norvell, Spencer Norvell, Davis Jackson and Rhina Jackson; that the railroad company records were altered and changed so as to show incorrect and false matters in regard to the circumstances surrounding the death of some negro near Blue Mountain, Arkansas. That through collusion and fraud the records of a certain cotton gin were forged and made so as to deceive this court in said mentioned action,' and that said plaintiff has produced no evidence to show that said interveners procured and induced witnesses to swear falsely as set out in said paragraph, or otherwise, and that the plaintiff has produced no evidence tending to prove that said interveners removed the body of the dead negro from Blue Mountain, Arkansas, for the purpose of deceiving this court."
>
> "10. The court further finds that the plaintiff in this hearing produced no evidence whatever to substantiate any allegation of fraud practiced by the inter-

veners, or The Carter Oil Company, or any of them, upon this court or against the plaintiff." (R. 63-64)

The court also found again that the "California Raymond Jackson" was an impostor, as follows:

> "11. The court further finds that the plaintiff herein, designated as the 'California' Raymond Jackson, is not the son of Davis and Rhina Jackson, or either of them, and is not the allottee of the land in controversy herein, and that he is an impostor." (R. 64)

To the decree entered pursuant to such findings petitioner excepted, and notice was given of appeal to the Circuit Court of Appeals for the Tenth Circuit. (R. 65)

The pleadings at page 17 of the record disclose that on July 27, 1934, an order was entered allowing an appeal by petitioner to the United States Circuit Court of Appeals for the Tenth Circuit; that on the same day a citation was issued to defendants in said case citing them to appear in the Appellate Court at Denver; that on September 4, 1934, the District Court enlarged the time within which petitioner might docket and perfect an appeal to November 4, 1934; that petitioner did not perfect such appeal, and that some time after November 4, 1934, the defendants in said proceeding made application to the Circuit Court of Appeals to docket and dismiss petitioner's appeal; that pursuant thereto such appeal was docketed in the Appellate Court as case No. 1175, and on November 28, 1934, an order was entered dismissing said appeal at petitioner's costs.

So ended the 1934 proceeding and the Second Chapter of the "California Raymond Jackson" litigation.

On July 26, 1937, the "California Raymond," through an entirely new set of attorneys—W. P. Smith, Marvin T. Johnson and Coakley & McDermott, all of Tulsa, Oklahoma, asked leave to file a bill of review to impeach decree of April 18, 1932, entered in No. 3948 Equity, consolidated, and the decree of May 3, 1934, in case No. 4537 Equity, consolidated, which bill petitioner tendered with his application.

(R. 65-72) Among the allegations of fraud contained in said bill it was alleged that Davis Jackson conspired with various witnesses who testified at the former hearings on behalf of defendants to produce and did produce perjured testimony to the effect that Raymond Jackson, his son, was dead; that since the former hearings the petitioner had found additional witnesses to support petitioner's allegations of fraud, among them being one Mattie Delores, mother of Buddie Delores, who was the boy actually killed in a train accident at Blue Mountain, Arkansas, and whose body the defendants claim to be that of Raymond Jackson; that various sums of money were paid to the mother of the deceased boy to permit defendants to claim the body of the deceased as that of "Raymond Jackson."

The pleadings at page 18 of the record disclose that on July 26, 1937, without notice to the defendants, an order was entered in No. 3948 Equity, consolidated, granting to petitioner leave to file his bill of review in said cause; that thereafter motions were filed by defendants to vacate the order granting leave to file bill of review; that subsequent thereto Charles A. Coakley and R. B. McDermott filed their application to withdraw as counsel; that under date of December 10, 1937, Marvin T. Johnson filed his application to withdraw as counsel; that said cause was set for hearing on the motion docket at Chickasha, Oklahoma, on December 16, 1937, but was stricken at the request of W. P. Smith, the only remaining attorney for petitioner. On March 14, 1938, the case came on for hearing on defendants' motion to vacate the order granting leave to file bill of review. Following the hearing on March 14, 1938, an order was entered in said cause vacating the former order granting leave to file bill of review. (R. 72-73)

So ended the 1937 proceeding and the Third Chapter of the "California Raymond Jackson" litigation.

The pleadings at pages 18-19 of the record disclose that on March 13, 1939, James A. Harris, as guardian of the so-called "California Raymond Jackson" filed in the

United States District Court for the Eastern District of Oklahoma a motion for leave to file complaint of review, which was docketed as No. 73 Civil; that without notice to defendants permission was granted by the District Court to the filing of such complaint. Thereafter, on April 6, 1939, an amended complaint was filed in said proceeding. (R. 73-101) It is in this proceeding that Mr. F. E. Riddle of Tulsa, Oklahoma, first appears as attorney for the "California Raymond Jackson," all of the numerous former attorneys having apparently abandoned the case. In said amended complaint it was alleged that the "California Raymond Jackson," on whose behalf the suit was filed, was the allottee of the land involved in the instant case; that defendants in said case, Davis A. Jackson, Rhina Jackson, A. S. Norvell, R. S. Norvell, and The Carter Oil Company, had theretofore wrongfully and unlawfully entered into a conspiracy with the intent and for the purpose of showing that Raymond Jackson, the son of Davis A. and Rhina Jackson, had been killed near Blue Mountain, Arkansas, when in fact they knew that the true allottee of the land and the son of Davis and Rhina Jackson was in fact living; that extrinsic fraud was practiced upon the court and upon the "California Raymond Jackson" in connection with the decree entered on April 18, 1932, in that witnesses were bribed to stay away from court and others were paid large sums of money to testify to a certain state of facts; that the only issue tried and determined at the hearing in May, 1934, was whether or not there was sufficient newly discovered evidence, and evidence showing fraud, to entitle the petitioner to impeach the decree of April 18, 1932; that the acts and the conduct of the respondents in obtaining the decree of April 18, 1932, constituted a crime under the Statutes of the United States, which fraud had been concealed from the petitioner and his counsel for many years after the decree was entered. In support of these allegations of fraud, 51 affidavits were attached to the amended complaint as exhibits. (R. 102-177) It is interesting to note that many of the exhibits so attached to the amended complaint were

affidavits taken by W. P. Smith, as United States Commissioner, who was the only remaining attorney for petitioner at the hearing of March 14, 1938.

The record at page 19 discloses that defendants filed their motion to dismiss said amended complaint, attaching to their motion, or by reference incorporating therein, the former decrees of the District Court denying relief to the "California Raymond Jackson." Thereafter and under date of December 2, 1939, and after a full presentation the respondents' motion to dismiss was by Judge KENNAMER sustained. Thereupon petitioner elected to stand on his amended complaint, and the same was dismissed with prejudice, and judgment was entered in favor of the respondents and against the petitioner for costs expended. (R. 177-178) In connection with the decree so entered Judge KENNAMER filed an opinion, wherein he found that there was no error in the record in pursuance of which the former judgments and decrees had been entered; that the allegations of extrinsic fraud were but a rehash of those presented in the former suit to impeach decree and which had been found to be without merit; that the "California Raymond Jackson" was a shrewd and designing individual and a fraud. (R. 179-184)

Pleadings at page 20 of the record disclose that from the order and decree of December 2, 1939, in No. 73 Civil an appeal was duly taken by the petitioner to the United States Circuit Court of Appeals for the Tenth Circuit; that the transcript on appeal was filed in the appellate court on May 29, 1940, and the case therein docketed as No. 2122; that thereafter F. E. Riddle, attorney for petitioner, was advised by the clerk of the Circuit Court as to the estimated cost of printing the record; that petitioner failed to make the required deposit to cover this estimated cost; that an order was entered by the Circuit Court on August 5, 1940, giving the petitioner until September 1, 1940, to make the deposit; that thereafter, upon request of petitioner, a further extension of time was granted to September 30, 1940; that petitioner failed to make the deposit, following which

an order was entered by the Circuit Court on November 18, 1940, dismissing the appeal for failure to prosecute.

So ended the 1939-1940 proceeding and the Fourth Chapter in the "California Raymond Jackson" litigation.

On November 19, 1943, a complaint was filed in the United States District Court for the Eastern District of Oklahoma on behalf of the "California Raymond Jackson" against Davis A. Jackson, Rhina Jackson, A. S. Norvell, deceased, and The Carter Oil Company, as defendants. This case was docketed under No. 1128 Civil. Thereafter an amended petition was filed (R. 1-10), wherein it was alleged that the Raymond Jackson on whose behalf the action was filed was the owner of the land involved in the instant case; that certain prior orders, judgments and decrees should be reviewed, vacated, set aside, and held for naught; that The Carter Oil Company and Davis A. Jackson had entered into a conspiracy to establish the allottee's death in 1921; that they aided in procuring false evidence and in the suppression of other evidence which would have established the identity of the petitioner as being the allottee; that during litigation resulting in the decree of April 18, 1932, B. B. Blakeney, an attorney for petitioner, withdrew from the case without the knowledge of petitioner and failed and neglected to perfect an appeal; that subsequent thereto Kenneth Kienzle, associate counsel in the case, procured one Jim Barnett, an attorney, to prepare said appeal and delivered to said Barnett the sum of $500.00 for the purpose of having a copy of the transcript of the record printed and filed in the appellate court and to prepare and file a brief in said cause; that said attorney, for causes unknown to petitioner, failed and neglected to perfect said appeal, which fact became known to him only after the dismissal of the appeal; that said conduct constituted fraud upon the petitioner; that in the year 1934 Kienzle filed a complaint in the United States District Court for the Eastern District of Oklahoma on the ground of newly discovered evidence for the purpose of impeaching the decree of April

18, 1932; that upon the hearing thereon no evidence of fraud was introduced nor was there any newly discovered evidence produced, whereupon the complaint was dismissed; that thereafter W. P. Smith, on behalf of the petitioner, obtained an order permitting him to file a bill in the nature of a review, to which the respondent, The Carter Oil Company, filed certain pleadings; that Coakley & McDermott, who were attorneys for petitioner, withdrew from said cause without notice a few days prior to hearing of motions filed therein, which resulted in action taken by the court on March 14, 1938; that Davis A. Jackson died in May, 1939, and up to the time of his death that Rhina Jackson was intimidated by him and thereby was prevented from making declarations of truth which she has since made; that immediately following the death of Davis A. Jackson, The Carter Oil Company, together with diverse others, intimidated the said Rhina Jackson so that she did not immediately make a full disclosure of the true facts; that Rhina Jackson has now made sworn statements setting forth the true facts which will be offered in evidence. On the grounds stated petitioner prayed for an order vacating and setting aside the decree of April 18, 1932, and the order of May 3, 1934. In this proceeding for the first time appear A. G. W. Sango and I. F. Bradley, Jr., as attorneys for petitioner, none of his former attorneys appearing of record.

To the amended complaint so filed the respondent, The Carter Oil Company, filed its answer, attaching thereto, or by reference incorporating therein, certain former pleadings and former decrees of the court denying relief to petitioner. (R. 10-21) Among the instruments attached to the answer of The Carter Oil Company was a copy of the amended complaint filed by the "California Raymond Jackson" in case No. 73 Civil, to which petitioner had attached as exhibits some 51 affidavits. It is these affidavits so attached to petitioner's amended complaint in case No. 73 Civil that petitioner in his petition for writ of certiorari in

the instant case refers to repeatedly as exhibits attached to respondents' answer.

The respondent, Rhina Jackson, through her attorneys, W. W. Pryor and Glenn O. Wallace, of Wewoka, Oklahoma, filed her answer, denying generally each, every and all of the allegations contained in the amended complaint and specifically denying that petitioner, the "California Raymond Jackson," was her child; also, she specifically denied the allegations in the amended complaint with reference to intimidation, coercion, and over-persuasion by Davis A. Jackson, deceased. (R. 185-186)

Other respondents filed their answer to the amended complaint through their attorney, W. M. Haulsee, of Wewoka, Oklahoma, specifically denying all allegations of fraud. (R. 186-189)

To the answers so filed petitioner filed his reply. (R. 189-200) Therein reference was made to a guardianship proceeding in the Superior Court of Los Angeles County, California, wherein a guardian was appointed for the "California Raymond Jackson" under the alias of "Willie Harjo," which adjudication of incompetency it was alleged had never been set aside. Petitioner further denied that he was bound by the orders, judgments and decrees referred to in respondents' answers by reason of the fraudulent and collusive conduct of counsel then pretending to represent petitioner and by reason of fraud of respondents.

Respondents filed motions for summary judgment (R. 204, 207, 208), following which an amended motion for summary judgment was filed. (R. 209-210)

On May 4, 1944, the cause came on for hearing upon amended motion of respondent for summary judgment. It was agreed by all parties that for the purpose of the hearing on said motions the copies of pleadings, orders and decrees attached to the answer of The Carter Oil Company should be considered as true copies of the originals. (R. 212) After argument of counsel, Judge Broaddus sustained respondents' motion for summary judgment, dismissed pe-

titioner's amended complaint and perpetually enjoined the so-called "California Raymond Jackson" from filing further suits or prosecuting further litigation against the respondents, or their successors in interest, based on the claim that he was Raymond Jackson, the allottee of the land involved. (R. 211-212)

From the decree so rendered notice of appeal was duly given by petitioner. (R. 213) However, the appeal was not perfected. Upon motion of respondents the cause was docketed in the Circuit Court and the appeal therein dismissed. (R. 213-214)

So ended the 1944 proceeding and the Fifth Chapter of the "California Raymond Jackson" litigation.

On March 31, 1945, the petitioner filed his motion to vacate and set aside summary judgment of May 4, 1944. Movent's attorneys were A. G. W. Sango and C. R. Nixon of Tulsa, Oklahoma, and I. F. Bradley, Jr., of Kansas City, Kansas. In said motion it was alleged that plaintiff had been denied a fair opportunity to present his case at the hearing on May 4, 1944, by reason of certain evidence of a documentary nature, which through fraud and collusion of an attorney representing the plaintiff was unexpectedly withheld by said attorney at the time of the hearing; that plaintiff since said hearing had come into possession of such documentary evidence and pictures and that the same were material for the complete prosecution of plaintiff's cause; that the documentary evidence consisted of affidavits of certain parties, which were attached to the motion as Exhibits "A," "B," "C," "D," "E," and "F"; that the pictures relied on were of the plaintiff, his mother, Rhina Jackson; his brother, Aaron, and his sister, Myrtle, which pictures were attached to the motion as Exhibits "A-1" and "B-2"; that at the time of the former hearing the information referred to was in the possession of one George Adams, an attorney who had represented plaintiff; that plaintiff went to Chicago to negotiate for the procurement of the affida-

vits and pictures, but that Adams stated that they were worth more than five thousand dollars ($5,000.00) to him but assured plaintiff that he, Adams, would be present and present such affidavits and pictures in open court; that plaintiff relied upon the statements so made by his former attorney, but that Adams failed to appear at the hearing on May 4, 1944; and plaintiff was not able to secure said newly discovered evidence until March 12, 1945; that plaintiff's application for a bill of review and his right thereto was justified on the basis of this newly discovered evidence. (R. 214-218)

Defendants therein filed their motions to dismiss. (R. 229-238)

On June 13, 1945, pursuant to regular setting, the matter came on for hearing on petitioner's motion to vacate and set aside summary judgment. C. R. Nixon having withdrawn as attorney, petitioner was represented at the hearing by Font L. Allen and A. G. W. Sango, attorneys of Tulsa, Oklahoma. The trial court proceeded to hear testimony on petitioner's motion. At the conclusion of the evidence, Judge Broaddus overruled and denied in all respects petitioner's motion to vacate and set aside summary judgment. (R. 239)

The cause was duly appealed to the Tenth Circuit Court of Appeals where it was briefed by appellant and appellees. Pursuant to regular setting, the case was argued orally before the appellate court. Thereafter and on August 6, 1946, a unanimous opinion of the Circuit Court was filed in the case affirming the action of the District Court in overruling and denying petitioner's motion to vacate and set aside summary judgment. (R. 243-247)

With Honorable Sam G. Bratton, Honorable Walter A. Huxman, and Honorable Alfred P. Murrah participating, and all concurring, judgment was duly entered so affirming the lower court. (R. 247) The petitioner seeks to have said judgment reviewed by his petition for writ of certiorari herein.

ARGUMENT *and* AUTHORITIES.

The reasons stated by petitioner for issuance of a writ of certiorari in this case are set forth on page 19 of his petition. Although set out as four in number, but one reason is advanced and that is fraud which petitioner claims was perpetrated upon him and the court in obtaining prior decrees and judgments. The ground relied on for asserting the existence of such fraud is the 51 affidavits which petitioner refers to repeatedly as being attached to the answer of respondent, The Carter Oil Company.

As heretofore shown in our statement of the case, the affidavits referred to were attached to petitioner's amended complaint in No. 1128 Civil, a copy of which pleading was attached as an exhibit to respondent's, The Carter Oil Company's, answer, as were also copies of other pleadings of like nature filed by petitioner in former cases. These pleadings, together with the judgments and decrees entered thereon, were of such nature as to convince the trial court that the issues attempted to be raised by petitioner had theretofore been fully adjudicated. Respondent's motions for summary judgment were thereupon sustained, and petitioner's amended complaint was dismissed with prejudice. (R. 211)

If, as now contended by petitioner, in his petition for writ of certiorari, the court erred in so dismissing his amended complaint with prejudice, his relief was by appeal to the Circuit Court of Appeals for the Tenth Circuit. He did give notice of appeal. (R. 213) However, the order entered in the appellate court shows that the appeal was docketed therein by respondents and not by the petitioner and that the appeal was dismissed. (R. 213-214)

By his petition for writ of certiorari the petitioner is asking the Supreme Court to review the judgment of May 4, 1944, when it is shown by the record that he did not see

fit to have said judgment reviewed on appeal by the Circuit Court of Appeals.

That he realized his rights were fully foreclosed on this score is shown convincingly by the motion later filed, upon which the hearing was had in this immediate proceeding. In his motion to vacate and set aside summary judgment filed on March 31, 1945, (R. 214-218) but two grounds were alleged upon the basis of which petitioner sought to have vacated and set aside the summary judgment of May 4, 1944. Those grounds were as follows:

(1) That one George Adams of Chicago, Illinois, an attorney representing petitioner, perpetrated a fraud upon him by failing to show up at the trial on May 4, 1944, with the affidavits and pictures which he had in his possession; and

(2) That petitioner was not able to obtain possession of said affidavits and pictures until March 12, 1945, and that the same constituted newly discovered evidence of such nature as to entitle him to have the summary judgment of May 4, 1944, vacated and set aside.

It was upon issues so presented that the matter came on for hearing on June 13, 1945. Although he attempts to question it in his petition for writ of certiorari the record clearly shows that petitioner presented evidence in support of his motion. (R. 239) There is nothing to indicate but that petitioner would have been permitted to present any further or additional evidence had he seen fit to do so. Even if petitioner were correct in his contention that no evidence was offered at the hearing on June 13, 1945, his position would not thereby be improved. So long as he was given ample opportunity to present his case, if he failed to support his allegations of fraud by competent evidence, he has no legal grounds to complain of the adverse action taken by the court.

Petitioner, having offered his proof and closed his case, the trial court was required to dispose of the matter one way or the other. This he did by overruling petitioner's

motion to vacate and set aside summary judgment. (R. 239) The order of the District Court in this regard was duly affirmed by the Circuit Court of Appeals. (R. 247)

Not only does the record in this case amply support the judgment of the Circuit Court of Appeals in so affirming the trial court, but it goes much farther. It clearly discloses that no other action properly could have been taken by the appellate court.

Under the Rules of the Supreme Court a review on writ of certiorari will not be granted merely to give the defeated party in the Circuit Court of Appeals another hearing. As stated in Section 5 of Rule 38, a review on writ of certiorari is not a matter of right but of sound judicial discretion and will be granted only where there are special and important reasons therefor. While not controlling or fully measuring the court's discretion, the rule sets out the following as indicating the character of reasons which will be considered as sufficient in cases involving a decision of a Circuit Court of Appeals:

> Where a Circuit Court of Appeals has rendered a decision in conflict with a decision of another Circuit Court of Appeals on the same matter; or has decided an important question of local law in a way probably in conflict with applicable local decisions; or has decided an important question of general law in a way probably untenable or in conflict with the weight of authority; or has decided an important question of federal law which has not been but should be settled by the Supreme Court; or has decided a federal question in a way probably in conflict with applicable decisions of the Supreme Court; or has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such a departure by a lower court as to call for an exercise of the Supreme Court's power of supervision.

There is nothing in the instant case to disclose special or important reasons which call for the exercise of the Su-

preme Court's power of supervision. This Court has held on more than one occasion that it will not grant a writ of certiorari merely to review evidence or inferences to be drawn therefrom. One such case involving rights of parties arising under different patents is *General Talking Pictures Corporation* v. *Western Electric Company,* 304 U. S. 175, 82 L. ed. 1273. Mr. Justice BUTLER, speaking for the Court, in this regard says:

> "There is nothing in the lower court's decision on either of the added questions to warrant review here. Whether respondents acquiesced in the infringement and are estopped depends upon the facts. Granting of the writ would not be warranted merely to review the evidence or inferences drawn from it. *Southern Power Co.* v. *North Carolina Pub. Serv. Co.,* 263 U. S. 508, 68 L. ed. 413, 44 S. Ct. 164; *United States* v. *Johnston,* 268 U. S. 220, 227, 69 L. ed. 925, 926, 45 S. Ct. 496. Moreover, the decision on that point rests on concurrent findings. They are not to be disturbed unless plainly without support. *United States* v. *Chemical Foundation,* 272 U. S. 1, 14, 71 L. ed. 131, 142, 47 S. Ct. 1; *United States* v. *McGowan,* 290 U. S. 592, 78 L. ed. 522, 54 S. Ct. 95; *Alabama Power Co.* v. *Ickes,* 302 U. S. 464, *ante* 374, 58 S. Ct. 300."

There are a number of cases to like effect decided prior to the Amendment of 1925 of Section 240 of the Judicial Code. Although it is doubtful whether the rule theretofore laid down will longer be applied so strictly since the enactment of said amendment, prior decisions are not entirely obsolete. One such case is *Magnum Import Company* v. *Francois Joseph De Spoturno Coty,* 262 U. S. 159, 67 L. ed. 922. Therein Mr. Chief Justice TAFT, for the Court, says:

> "The question how the court should exercise this power next arises. The jurisdiction to bring up cases by certiorari from the Circuit Courts of Appeals was given for two purposes: *First,* to secure uniformity of decision between those courts in the nine circuits;

and, *second,* to bring up cases involving questions of importance which it is in the public interest to have decided by this court of last resort. The jurisdiction was not conferred upon this court merely to give the defeated party in the Circuit Court of Appeals another hearing. Our experience shows that 80 per cent of those who petition for certiorari do not appreciate these necessary limitations upon our issue of the writ."

See, also, *Southern Power Company* v. *North Carolina Public Service Company,* 263 U. S. 508, 68 L. ed. 413, wherein the following is quoted from the opinion of Mr. Justice McReynolds:

"This writ must be dismissed. The petition therefor stated that the cause involved a grave question of vital importance to the public, and alleged as special reason for its re-examination that the decree would deprive petitioner of property without due process of law, and of freedom to contract, contrary to the Federal Constitution. The opinion below is reported in 33 A. L. R. 626, 282 Fed. 837.

"The argument developed that the controverted question was whether the evidence sufficed to establish actual dedication of petitioner's property to public use —primarily a question of fact. That is not the ground upon which we granted the petition, and, if sufficiently developed, would not have moved us thereto."

No valid reason is advanced by petitioner to justify a review by this Court of the judgment of the Circuit Court of Appeals on writ of certiorari. As stated in the case of *Magnum Import Company* v. *Francois Joseph De Spoturno Coty, supra,* jurisdiction was not conferred upon the Supreme Court merely to give the defeated party in the Circuit Court of Appeals another hearing.

Conclusion.

No one can say that petitioner has not had his day in court. Two times and at great length his case was tried before Judge WILLIAMS. Three years after Judge WILLIAMS' second judgment against him, petitioner tried again to impeach the former decrees, but the district court refused him permission to file a bill of review. Two years later Judge KENNAMER was called upon to pass on petitioner's claim. Four years after Judge KENNAMER had held against him, petitioner attempted to relitigate his claim again, this time before Judge BROADDUS. Two years after Judge BROADDUS' first judgment against him, petitioner made his sixth effort. This time Judge BROADDUS again entered an order against him. Added to all these is the judgment of the Circuit Court of Appeals for the Tenth Circuit, unanimously affirming Judge BROADDUS in the last of the six cases.

Surely there should be an end to litigation of this nature. So long as his case is pending in the courts, petitioner is in position to enlist new financial backers. The record discloses that his activities in this regard have not gone unrewarded—that is, in so far as petitioner is concerned. Lucretia Bivans happened to be one whose interest he succeeded in enlisting. To her lasting misfortune she was named guardian for the petitioner by the County Court of Tulsa County, Oklahoma. Her final report as guardian (R. 26-33) discloses that in the very short period of time between April 10, 1940, and July 12, 1940, while receiving nothing in her capacity as guardian, she expended out of her own funds a total of $14,046.98, most of which was money paid out to the petitioner himself.

The District Court has done its best to put a stop to the further maneuvering of this petitioner. The Circuit Court of Appeals for the Tenth Circuit has placed its stamp of disapproval upon the use of the courts for the purpose of furthering a racket such as has been through the years perpetrated upon the lawyers and laymen of Oklahoma and other

states by this petitioner. We feel confident that this Court will promptly terminate this harassing litigation.

Petition for writ of certiorari in this case should be denied.

Respectfully submitted,

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